

Franchise Tax Board**ANALYSIS OF ORIGINAL BILL**

Author: Yee Analyst: Deborah Barrett Bill Number: SB 1696
Related Bills: See Legislative History Telephone: 845-4301 Introduced Date: February 22, 2008
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: California Public Records Act/State Agencies May Not Allow Another Party To Control The Disclosure Of Information Subject TO Disclosure

SUMMARY

This bill would do the following:

- declare existing law prohibits state or local agencies from making otherwise disclosable records non-disclosable pursuant to an agreement or contract and
- require that any contract entered into by a state or local agency, including the University of California, which requires a private entity to review, audit, or report on any aspect of that agency, is a public document subject to the Public Records Act (PRA).

PURPOSE OF THE BILL

According to the author's office, the purpose of the bill is to ensure that public records remain accessible to the public.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2009. It appears the provisions prohibiting making otherwise disclosable records non-disclosable pursuant to an agreement or contract is declaratory of existing law. Provisions requiring contracts with public entities to review, audit, or report on any aspect of that agency by a private entity to be made disclosable under the PRA would be operative on January 1, 2009.

POSITION

Pending.

ANALYSIS**FEDERAL/STATE LAW**

Under federal law, the United States (U.S.) Freedom of Information Act (FOIA) ensures public access to U.S. government records. FOIA carries a presumption of disclosure; the burden is on the government to substantiate why information may not be released. Upon written request, federal agencies are required to disclose the requested records, unless they can be lawfully withheld from disclosure under one of the specific exemptions in the FOIA. Federal agencies are given 20 days to determine whether the agency is able to comply with the information request and notify the requestor of their determination.

Board Position:

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Department Director

Date

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Under state law, the PRA is designed to give the public access to information in possession of public agencies. The state agency bears the burden of justifying nondisclosure of requested information. The agency must justify the withholding of any record by demonstrating that the record is exempt or that the public interest in confidentiality outweighs the public interest in disclosure. The state agency is given 10 days to determine whether the department possesses records responsive to the request that may be disclosed and to notify the requestor accordingly along with the estimated date and time when the records will be made available.

THIS BILL

This bill would provide that information otherwise subject to disclosure pursuant to the PRA cannot be made confidential by a state or local agency through a confidentiality agreement or other contract. A state agency cannot require permission from the other party of a contract before disclosing information in response to a PRA request. The bill would specifically find that these provisions are declaratory of existing law.

This bill would also provide that any contract entered into by a state or local agency, including the University of California, which requires a private entity to review, audit, or report on any aspect of that agency, is a public document subject to the PRA.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's operations or programs.

LEGISLATIVE HISTORY

AB 721 (Maze, 2007) would have shortened the timeframe within which public agencies must respond to PRA requests when a request comes from a Member of the Legislature. This bill was held in the Assembly Appropriations Committee.

AB 1393 (Leno, 2007) would have required a state agency to include specific information on its web site about requesting copies of public records. This bill was vetoed by Governor Schwarzenegger, whose veto message can be found in Appendix A.

AB 1014 (Papan, Ch. 355, Stats. 2001) requires a state or local agency to estimate the date and time when a public record that can be disclosed will be made available. This law also requires a state or local agency to identify, describe, and assist the requester with reasonable options to obtain records responsive to their request or inquiry.

AB 2799 (Shelley, Ch. 982, Stats. 2000) requires a denial of requests for public records to be in writing.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not impact state income tax revenues.

LEGISLATIVE STAFF CONTACT

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**Appendix A to SB 1696
Prior Legislation Veto Message**

Veto Message for AB 1393

BILL NUMBER: AB 1393
VETOED DATE: 10/11/2007

To the Members of the California State Assembly:

I am returning Assembly Bill 1393 without my signature.

Ensuring access to public information is one of my Administration's top priorities. That is why last year I issued Executive Order S-03-06 (Order), requiring all state agencies to review their guidelines governing access to public information. In addition, the Order required that every agency identify and train staff to be responsible for ensuring compliance with the California Public Records Act.

As I noted in my veto of similar legislation last year, I believe the steps that were taken as a result of the Order, combined with the ongoing efforts of agencies to comply with the law, are working to ensure the needs of the public are met. This bill imposes an unnecessary one-size-fits-all mandate on state agencies. In addition, this bill would require the formation of a task force to consider even more statutory standards to govern the disclosure of public records. Such a task force and such additional statutory changes are also unnecessary. My Administration's commitment to the Public Records Act is unwavering and I am confident future Administrations will share this attitude.

Sincerely,

Arnold Schwarzenegger